



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**  
**ELC SUIT NO. ELCEP CIVIL SUIT NO. E005 OF 2025**

**SYOKIMAU RESIDENTS' ASSOCIATION.....**

**.....PLAINTIFF VERSUS**

**THE DANIEL SCHOOLS LIMITED .....1ST**  
**DEFENDANT**

**COUNTY PHYSICAL PLANNER,**  
**MAVOKO SUB-COUNTY.....2ND**  
**DEFENDANT**

**COUNTY GOVERNMENT OF MACHAKOS .....3RD**  
**DEFENDANT**

**RULING**

1. This ruling considers the notice of motion dated 1/12/2025, filed by the plaintiff and presented pursuant to **Articles 42, 69** and **70** of the **Constitution; Sections 1A, 1B** and **3A** of the **Civil Procedure Act; Sections 13** and **18** of the **Environment and Land Court Act; and Order 40, Rules 1,**

**2 and 3, and Order 51, Rule 1 of the Civil Procedure Rules.**

The plaintiff seeks the following orders from this court.

**a. Spent.**

**b. Spent.**

**c. Pending the hearing and determination of this suit and/or pending the final determination by the National Land Commission of its review of grants and dispositions in respect of L.R. No. 12715 and in particular L.R. No. 12715/267 and its subdivisions (including L.R. No. 13323/94), this honourable court be pleased to issue a temporary injunction restraining the 1st defendant, whether by itself, its directors, servants, employees, agents and/or any person acting under its authority, from carrying out or continuing with any construction, development, excavation, fencing, subdivision, sale, transfer or in any other manner dealing with L.R. No. 13323/94.**

**d. Pending the hearing and determination of this suit, this honourable court be pleased to issue an order compelling the 2nd and 3rd defendants to enforce the enforcement notice ref. no. EN2/11/25 dated 12/11/2025 issued against the 1st defendant in respect of L.R. No. 13323/94, including requiring immediate**

***cessation of all construction works on the suit property.***

***e. That the Officer Commanding Station (OCS), Syokimau Police Station and/or the Sub-County Police Commander, Athi River Sub-County, do provide security and assistance to ensure effective enforcement and compliance with the injunctive and mandatory orders issued herein.***

***f. The costs of this motion be provided for.***

2. The motion is supported by the grounds contained in the supporting affidavit of Mohamed Ismail Abdi, sworn on the same date and another on 11/12/2025. In summary, he avers that the suit property is part of a larger parcel previously known as **L.R. No. 12715/267 (“mother parcel”)**, which was originally set aside in the Syokimau Estate planning scheme for public uses like a community centre, market, health facilities, administration offices, and road reserves.
3. However, it was later irregularly subdivided and allocated to private developers. Consequently, in **Machakos ELC JR E014 of 2021 - Republic v National Land Commission & County Physical Planner, Mavoko Sub-County; ex parte Syokimau Residents Association**, the National Land Commission (**“NLC”**), through its director of legal affairs and dispute resolution, Brian Ikol, confirmed in a replying affidavit that: (a) the NLC reviewed grants and dispositions for the parent parcel L.R. No. 12715 and its subdivisions in Syokimau;

(b) the review found that the required surrender of land for public utilities was not followed, resulting in irregular allocations to private individuals; and (c) to maintain the *status quo* until the review is complete. The NLC sent a letter dated 18/02/2020 to the Chief Land Registrar, directing restrictions on **L.R. No. 12715/267, 12715/207, 12715/255, 12715/256, 12715/414, 12715/409, 12715/447, and 12715/700 (“restricted parcels of land”)**.

4. Moreover, in **Machakos ELC Case No. 14 of 2020 - Syokimau Residents Association v Brisk International Limited & 2 others; National Land Commission (Interested Party)**, the court issued orders on 4/06/2021 stopping a developer from building on parcels **L.R. Nos. 13323/117, 118, 119, and 120 (also subdivisions of L.R. No. 12715/267) (hereinafter “restricted parcels of land”)** because they lacked development permission from the county government and due to ongoing NLC investigations. Despite this, in November 2025, the plaintiff saw that the 1st defendant had started new construction on the suit property to build a school. On 10/11/2025, the plaintiff wrote to the 2nd and 3rd defendants, asking them to stop approvals and issue stop orders for developments on the mother parcel and its subdivisions, including the **L.R. No. 13323/94 (“suit property”)**, and reminded them about the ongoing investigations and court orders.

5. After this complaint, the 3rd defendant, through its building inspector, issued an enforcement notice ref. no. EN2/11/25 dated 12/11/2025 to the 1<sup>st</sup> defendant over the suit property for violation of encroaching on a public utility land contrary to **Section 56(2)** of the **Physical and Land Use Planning Act (hereinafter “PLUPA”)** and required the 1st defendant to stop all activities on the land immediately, effective from 12/11/2025.
6. Despite the enforcement notice, the 1st defendant has continued, and is continuing, to carry out major construction on the suit property, openly ignoring the 3rd defendant’s directive. The 1st defendant’s actions are illegal and risk permanently depriving Syokimau residents of land meant for public use. If the school is finished and becomes operational, it will be challenging, disruptive, and costly to remove or demolish the buildings, making the enforcement notice, the ongoing NLC investigations, and these proceedings ineffective.
7. The 1<sup>st</sup> defendant, by an undated replying affidavit (which this court considers a technical error) of Daniel Musyoka Maithya, informs the court that the suit property is private and was designated for commercial use, such as shops, offices, or flats, according to special condition three on the title. Other properties in the same economic zone are also used for commercial purposes. The 1st defendant is not involved in **Machakos ELC JR E014 of 2021- Republic v National Land Commission & County Physical Planner, Mavoko Sub-**

**County; ex parte Syokimau Residents Association,** and the suit property is not part of those proceedings.

8. Additionally, the NLC is also not a party in this matter. No restrictions have ever been placed on the suit property, so there is nothing stopping development. **Machakos ELC Case No. 14 of 2020 - Syokimau Residents Association v Brisk International Limited & 2 others; National Land Commission (Interested Party)**, only applies to the restricted parcels of land and not the suit property. In any case, this particular case concerned a lack of development permission from the County Government of Machakos.
9. As for the enforcement notice, neither the 1st defendant nor the developer has been served with it and in any case, the 1st defendant obtained all necessary approvals and permissions from the relevant authorities, including the co-defendants, before starting work. If the 2nd defendant issued the enforcement notice but did not serve it, the notice is invalid, unreasonable, and an abuse of office by the 2nd and 3rd defendants. The 1st defendant has not broken any terms of the approvals or licenses for the construction project. The plaintiff has no claim or interest in the suit property and is only harassing and intimidating the 1st defendant/Respondent, whose conduct has caused the 1st defendant significant loss and harm, especially as parents are now threatening to transfer their children because of a publication in the Standard Newspaper on 8/12/2025.

10. Respecting the 2<sup>nd</sup> and 3<sup>rd</sup> defendants' response, a replying affidavit is filed by Annastacia W. Munyaka and sworn on 23/12/2025, and she maintains that Syokimau land known as **L.R 12715** was first owned by Syokimau Farm Ltd, which later subdivided and sold it as private land to the current owners. During the subdivision, the company set aside some blocks of land for various purposes, including the mother parcel. In the draft subdivision scheme, land was allocated for community facilities, but this land was never surrendered to the government for public use.
11. Even when the land was under the defunct Commissioner of Lands, there was no record of surrender for public purposes, or has it been surrendered to the county government for registration by the NLC as required by law. According to **PLUPA** and **Regulations 10** and **21** of the **Physical and Land Use Planning (General Development Permission and Control) Regulations**, the government can only take control of previously private land if it is surrendered as public land, so it can fulfil its constitutional mandate under **Article 62** and include it in county plans, provided there is an approved proposal for such surrender.
12. The suit property is a sub-plot that was formally and privately subdivided from the mother parcel. Although the suit property appears on the plaintiff's maps in areas marked for markets, schools, and public spaces, it is legally owned by the

1st defendant, who holds a valid title. Based on county maps and plans, the 1st defendant received approval to begin construction as requested in its application.

13. Further, the 2nd and 3rd defendants issued the enforcement notice as a precaution after members of the plaintiff claimed that the land had been surrendered. To prevent harm if this claim proved true, the enforcement was issued to pause activities until the facts could be confirmed. However, the plaintiff did not provide supporting documents. Without this supporting evidence, the enforcement notice is no longer valid and should be cancelled. Granting an injunction would disrupt the education of students.
14. In rejoinder, the plaintiff, through the affidavit of **Mohamed Ismail Abdi**, sworn on 23/12/2025, reiterated the averments summarised earlier in this ruling. Additionally, he states that the survey records show that the suit property emanates from the mother parcel, which parcel is expressly cited in the National Land Commission's letter of 18/02/2020 as forming part of the surrendered public utility land under investigation.
15. The motion is argued by written submissions. The court expresses its sincere gratitude for the submissions filed by the law firms of **Mss., VM & A Advocates LLP** for the plaintiff dated 23/12/2025, **B.M Mung'ata & Co. Advocates** for the 1st defendant dated 30/12/2025, and from the 2nd and 3rd defendants dated 29/12/2025. Consequently, after identifying

and considering the issues for determination, this ruling will, within its analysis and decision, consider the arguments presented in the respective submissions concerning the specific issue, as well as the relevant laws and judicial precedents relied upon.

16. Accordingly, having reviewed the motion, its grounds, affidavits, annexures, as well as the rival submissions dated 3/09/2025, the ensuing issue that emerges for determination and has been adequately addressed by the parties is **whether the plaintiff has met the legal threshold to warrant the grant of injunctive relief.**

17. Concerning this issue, as set out on the face of the motion, the relevant law granting this court authority to entertain motions of this nature is found in our **Order 40, Rule 1** of the **Civil Procedure Rules (CPR)**. This statutory provision states:

***“Where in any suit it is proved by affidavit or otherwise—***

***(a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or***

***(b)that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,***

***the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.”***

18. The principles for this court’s consideration in exercising its unfettered discretion to grant a temporary injunction are now well established through authoritative pronouncements. The three requirements are that an applicant, in this case the plaintiff, must: (a) establish his case at a *prima facie* level; (b) demonstrate irreparable injury if a temporary injunction is not granted; and (c) resolve any doubts by showing that the balance of convenience is in his favour. **See Giella v. Cassman Brown & Co. Ltd [1973] EA 358** and reiterated in the Court of Appeal decision of **Nguruman Limited v Jan**

**Bonde Nielsen & 2 others [2014] KECA 606 (KLR).** In the latter decision, the court stated: -

***“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to; (a) establish his case only at a prima facie level, (b) demonstrate irreparable injury if a temporary injunction is not granted, and (c) ally any doubts as to (b) by showing that the balance of convenience is in his favour. These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially.”***

19. Consequently, the plaintiff must first establish a *prima facie* case. In this case, the plaintiff asserts that it has satisfied the first criterion and relies upon the Court of Appeal decision of [Mrao Ltd v First American Bank of Kenya Ltd & 2 others \[2003\] KECA 175 \(KLR\)](#), which held:-

***“So what is a prima facie case? I would say that in civil cases it is a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the***

***opposite party as to call for an explanation or rebuttal from the latter.”***

20. The 1st defendant has also relied on **Mrao Ltd (Supra)**, and all defendants agree that the claimant has failed to establish a *prima facie* case. The court is inclined to align with the defendants. The plaintiff appears to frame this matter as a land dispute and questions the legality of the first defendant's land; however, the court respectfully declines this invitation, as the issues before it pertain to the enforcement notice issued by the 2nd and 3rd defendants, which concern environmental and planning matters, and that explains why the plaintiff has filed this case as one falling within that category.

21. If the plaintiff wishes this court to treat this matter as a land dispute, it should have properly moved this court from the onset, in any event, none of the documents submitted by the plaintiff at this stage demonstrate that the suit property, allegedly registered on 6/12/1988 and existing prior to the investigation conducted by the NLC has been the subject of inquiry or proceedings by the NLC, the **Machakos Environment and Land Court (ELC) in Case No. JR E014 of 2021 - Republic v. National Land Commission & County Physical Planner, Mavoko Sub-County; ex parte Syokimau Residents Association, or Machakos ELC Case No. 14 of 2020 - Syokimau Residents Association v. Brisk International Limited & others; National Land**

**Commission as interested party.** Considering this is an interlocutory matter, this court shall refrain from scrutinising the merits of the case in detail, bearing in mind that this is not a land dispute.

22. Returning to the enforcement notice, the parties, in addressing the test of a *prima facie* case, failed to address the court on the legal framework set forth in **Sections 57(5) and (6)** of the **PLUPA**. These provisions stipulate that a county executive committee member may revoke development permission only if the applicant has contravened any provision of the **PLUPA** or conditions attached to the development permission for justifiable reasons. Additionally, they permit such a member to modify the conditions of approval where circumstances warrant or for any justifiable cause. A cursory glance at these provisions reveals that the question of land being classified as public or private is not a consideration contemplated therein. Without delving further, the court finds that the plaintiff has not established a *prima facie* case. Consequently, given that the first threshold has not been satisfied and guided by **Kenya Commercial Finance Co. Ltd v. Afraha Education Society [2001] Vol. 1 EA 86**, the court deems it unnecessary to consider the remaining tests.

23. Ultimately, this court finds the notice of motion dated 1/12/2025 is not merited and since it was an interlocutory motion, costs shall be in the cause. A mention date shall be given for purposes of pretrial directions.

Orders accordingly.

**Delivered and Dated at Machakos this 20<sup>th</sup> day of January, 2026.**

**HON. A. Y. KOROSS  
JUDGE  
20.01.2026**

**Ruling delivered virtually through Microsoft Teams Video Conferencing Platform**

In the presence of;

Ms Kanja Court Assistant

Mr. Muhoro for Plaintiff/ Applicant

Miss. Ndunda for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant

Miss Nzili for 1<sup>st</sup> Defendant.